

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554**

In the Matter of

APPLICATION OF SBC COMMUNICATIONS,)	
INC. PURSUANT TO SECTION 271 OF THE)	
TELECOMMUNICATIONS ACT OF 1996 TO)	CC Docket No. 01-88
PROVIDE IN-REGION INTERLATA SERVICE)	
IN MISSOURI.)	

**RESPONSE OF THE MISSOURI
OFFICE OF THE PUBLIC COUNSEL
TO THE EVALUATION OF THE U.S.
DEPARTMENT OF JUSTICE**

The Missouri Office of the Public Counsel suggests to the Federal Communications Commission that the United States Department of Justice Evaluation of SBC Communication, Inc.'s Section 271 application for Missouri is squarely on point. The May 9, 2001 evaluation gives a clear and accurate picture of the Missouri situation. Although the DOJ's report did not specifically reference Public Counsel's FCC Comments, the same concerns that Public Counsel raised about the application before the Missouri Public Service Commission and before the FCC are some of the same concerns the DOJ raises here.

The DOJ focuses on the deficiencies in the implementation of proper pricing as a prerequisite to compliance with Section 271. (Evaluation, 1) It suggests the FCC pursue an "independent scrutiny of the prices at issue" rather than rely on the PSC's price setting decisions. (Evaluation, 2) The DOJ further suggests that these above-cost rates may have impeded competitive entry to reach residential customers as reflected in the almost total

lack of facilities-based competition to the residential market and limited residential resale competition. (Evaluation, 2) Finally, the report urges the FCC to “thoroughly investigate” whether SBC is complying with its resale obligations for advance services.

At page 12 of its Comments, Public Counsel made the case for its concerns about Missouri pricing as compared to pricing in other states:

“The answer is an equally obvious "No" to the question of whether it is in the best interest of the consumers of the state of Missouri to have CLECs operate under significantly less favorable prices as approved in another state in the same region served by SWBT. There is no persuasive evidence in the record to adequately explain the material differences in prices in the M2A and the T2A. (Tr. 2248-49) Deviations of magnitudes in excess of 10 % require significant justification. (Tr. 2250; 2260; 2257; 2255-56; 2253-54; 2277)”

The DOJ, at pages 12-13 of its evaluation, criticized the Missouri pricing decision-making process. It stated that: “A comparison of USF costs for Missouri with those of Texas and Kansas, however, suggests that the difference in the tariffed prices described above exceeds any cost differences between the states. . . .This significant cost differential, which is greater than the apparent cost differential compels further scrutiny of Missouri rates.”

The DOJ evaluation also highlights a serious weakness in SBC’s Missouri application: evidence of competition in the residential market. At page 5-6 of its evaluation, the DOJ notes the low level of competition for residential customers in Missouri. While CLEC resale reaches approximately 7 percent of business lines, CLEC penetration is only about 2 percent of residential lines. CLEC use of the UNE platform to reach the residential market is virtually nonexistent, less than one-tenth of one percent of residential lines. (Evaluation, p. 6) The report also noted that SWBT’s refusal to allow CLECs to participate fully in the Missouri Metropolitan Calling Area Plan delayed

competitive entry, as did SWBT's failure to comply with its obligations for maintenance and repair and for timely provisioning high-capacity (DS-1) loops. (Evaluation, 6-7).

Public Counsel urged a performance period for SWBT to operate under the M2A as a precondition to final MOPSC recommendation to the FCC. (Comments, 10-11) Such an evaluation period for performance may have eliminated the need for the DOJ to recommend a FCC investigation into compliance with resale obligations as the MOPSC record could have contained evidence of such compliance or noncompliance. The Section 271 process anticipates that a full record for FCC review be made at the state level and not at the time of the application and the 90 day window for the FCC to act.

CONCLUSION

Missouri Public Counsel asks the FCC to give great weight and validity to the evaluation of the Department of Justice. Based on Public Counsel's Comments previously filed with the FCC, the DOJ evaluation, and the record before the MOPSC, the FCC should not approve the application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 16th day of May, 2001 to the attorneys of record listed:

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